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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALFRED D. AGPAOA, et al.,
12 Plaintiffs,

13 v.

14 SECURED BANKERS MORTGAGE
15 COMPANY, et al.,

16 Defendants.

CASE NO. 09-CV- 1387 W (POR)

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS (DOC. 4)

17 Pending before the Court is a motion to dismiss filed by Defendants Bank of
18 America Home Loans, and Reconstruct Company, N.A. (Doc. 4). Plaintiffs have not
19 opposed.

20 Civil Local Rule 7.1(f.3.c) provides that “[i]f an opposing party fails to file papers
21 in the manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to
22 the granting of that motion or other ruling by the court.” The Ninth Circuit has held
23 that a district court may properly grant a motion to dismiss for failure to respond. See
24 generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming
25 dismissal for failure to file timely opposition papers where plaintiff had notice of the
26 motion and ample time to respond).

27 Here, based on the hearing date, Plaintiffs’ opposition was due on or before
28 September 4, 2009. Plaintiffs, however, did not file an opposition and have not

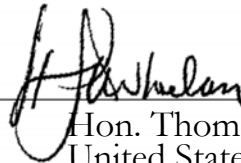
1 requested additional time to do so. Moreover, there is no evidence before the Court that
2 Defendants' moving papers failed to reach the mailing address designated in Defendants'
3 Proof of Service or that Plaintiffs were not aware of the pending motion. Relying on
4 Civil Local Rule 7.1(f.3.c), the Court deems Plaintiffs' failure to oppose Defendants'
5 motion as consent to its merits.

6 In light of the foregoing, Defendants' motion to dismiss (Doc. 4) is **GRANTED**
7 **WITH LEAVE TO AMEND.** Plaintiffs' amended complaint, which cures the
8 deficiencies identified in Defendants' motion, must be filed on or before **December 2,**
9 **2009.**

10 Plaintiffs are further cautioned that failure to comply with this order or to respond
11 to any future motions to dismiss may result in dismissal with prejudice.

12 **IT IS SO ORDERED.**

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14 DATED: November 2, 2009

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17 Hon. Thomas J. Whelan
United States District Judge